the same time, I will make an honest effort to see that the scope for harassment on the part of the tax officials is minimised. That is why I have reduced tax rules. That is why I have eliminated the maze of unused exemptions. Nobody really knew what the tax liability was. It was all in a book which was kept on the table of an inspector. I want to eliminate all this. I want to bring transparency. I want to reduce the scope of litigation. The big people can maintain liaison houses in Delhi, but small people cannot do so. I honestly believe that the process which I have initiated will, in the long run, provide added strength to the small men. I am not saying that I am infallible. If there are any anomalies, if there are any mistakes which have crept in, I will apply my mind to them. Already, our officials are receiving everybody to listen to their grievances. I will personally satisfy myself that the system that we have evolved serves the ends of this country.

THE DEPUTY CHAIRMAN: Now, we have the Statutory Resolution and the Special Court Amendment Bill, 1994. We also have the Coffee (Amendment) Bill, 1994. If the House agrees, we can first take up the Coffee (Amendment) Bill.

SHRI VIREN J. SHAH: The Special Court Amendment Bill should be taken up first.

THE DEPUTY CHAIRMAN: Actually, the Coffee (Amendment) Bill does not have too much of a controversy. We can finish it very fast.

SHRI VIREN J. SHAH: Madam, we can first finish the Special Court Amendment Bill.

THE DEPUTY CHAIRMAN: Actually, many Members want to speak on this Bill. But, I think nobody is interested to speak on the Coffee Bill.

SHRI VIREN J. SHAH: Madam, the Special Court Amendment Bill is listed first. Let us take it first.

THE DEPUTY CHAIRMAN: I have no objection. We have to finish all the business today and tomorrow. Tomorrow, there is the Private Member's business. Then the retiring Members will be given send-off in the morning. We have a party for the retiring Members. So, keeping that in view, it will be better if we finish all the business today. Now, we shall take up the Statutory Resolution and the Special Court Amendment Bill, 1994.

I. STATUTORY RESOLUTION SEEKING DISAPPROVAL OF SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS SECURITIES) AMENDMENT ORDINANCE, 1994.

II. THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) AMENDMENT BILL, 1994...

SHRI VIREN J. SHAH: (Maharashtra) Madam, I move:

> That this House disapproves of the Special Court (Trial of Offences relating to Transactions in Securities) Amendment Ordinance, 1994 (No. 3 of 1994) promulgated by the President on the 25th January, 1994

Madam, as I have said on earlier occasions also, it has been the principle of the Government to promulgate an ordinance when it was not necessary at all. Why am I opposing it? Madam, we would support the Bill as we did in the Lok Sabha. In 1992, a full debate took place on this subject. The last Session ended on the 30th December, 1993. This Ordinance was issued on the 25th January, 1994. When this Session was to commence on the 21st February, 1994, what was the purpose of issuing this Ordinance? During the trial of this great scam, an objection was raised about the civil jurisdiction of the Special Court. The point is: why is it that our Ministry of Law or the other concerned Ministries are not able to anticipate what would be required particularly, when we are trying a major case like the Scam? Why was it not anticipated?

THE DEPUTY CHAIRMAN: I would request the Members, if they have to make any consultations among themselves, they can go to the lobby.

SHRI VIREN J. SHAH: I was submitting that the Ministry of Law or the other concerned departments, do not seem to apply their minds. When this Bill was brought in 1992, to try an extraodrinary situation like the Scam, one should have anticipated that the jurisdiction of the Special Court in matters of civil claims could be challenged. Even if they had realised this later, when this House was in session till 24th December, 1993, the Bill could have been brought much earlier. That is my objection. Ordinances are being promulgated and I have been speaking against them. Madam Deputy Chairman, you had also supported me and had observed that this should be avoided. Some Members from the Treasury benches had also supported it. Yet, we find that Ordinances are being promulgated. This shows that the Government and the Law Ministry are not able to comprehend and anticipate things beforehand. I have the highest regard for the Judge presiding over the Special Court. He commands universal respect. But the problem is that because of the inadequacies and incompetence of the investigating agencies and the prosecuting agencies, work is being delayed. It is almost 13 years and no action has been taken so far. I will not take more time of the House. But my submission is that in spite of reservations, my party supports this Bill. But I would also like to submit that the work of the investigating agencies like the CBI and other prosecuting agencies should be speeded up. It is not desirable to keep these matters hanging in air for long. This is doing harm nationally as well as internationally. The main purpose of this Bill is to see that the Special Court is not bound by the procedure laid down in the Code of Civil Procedure. I think this is happening for the first time in the history of India's jurisprudence. Mr. Bhatia is more knowledgable and he knows about it better than me. It has been said that it shall be guided by the principles of natural justice. There may be very good reasons for bringing about this piece of legislation. Had it been bound by this Code, it would have taken much longer time and there would be appeals and counter appeals made in the Supreme Court. From that point of view, it has a purpose and it cannot be objected to. However, a departure of this kind should not be taken as precedent. There are grey areas and we need to look into them. We should see that this is not repeated; otherwise, the Parliament would be condemned. The impartiality of law may get affected and justice to that extent would also get affected. I am against this practice of promulgating Ordinances and hence I moved this Resolution. My party is not going to oppose the Bill. But certainly it supports the Resolution condemning the Ordinance.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI M. V. CHANDRASHEKHAR MURTHY): Madam, I beg to move:

> "That the Bill to amend the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, as passed by the Lok Sabha, be taken into consideration."

Madam, as this House is aware in the year 1992, certain irregularities in securities transactions of banks and financial institutions were exposed and in order to bring the culprits to book and to prevent divertion of funds by the persons responsible for these irregularities, a Special legislation, namely, Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, was enacted. The said Act, provides for establishment of a Sptcial Court at Bombay for trial of offences relating to transactions in securities or matters connected thedewith or incidentel thereto. The Act also provided for attachment of property of persons notified under this Act and vests the Special Court with powers for disposal of properties under attachment.

In the course of trial of cases filed before it, it was reported that the Special Court has been facing difficulties in deciding matters of civil claims for want of adequate/jurisdiction and powers. Specific jurisdiction in relation to civil matters was needed to be conferred on the Special Court as this provision was not in the original Act. There is also urgent need to dispose of cases by the Special Court speedily. For this purpose, a specific provision was felt necessary whereby the Special Court is not bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the Principles of Natural Justice and shall be empowered to regulate its own procedure. It was also considered necessary to confer power on the Special Court to punish for possible contempt of its orders with a view to ensure effective functioning of the Court. Provision for making alternate arrangements, when the Office of Judge of the Special Court is vacant by reason of absence or leave, to ensure speedy trial of offences pending before the Court has also become essential.

As the Government is keen to punish the persons responsible for irregularities and fraud and also to ensure that the funds lost by banks and financial institutions are recouped, it was necessary to strengthen the judisdiction and powers of Special Court urgently as indicated above. An Ordinance was, therefore, promulgated to amend the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, on 25th Jaunary, 1994. With this, I submit that the Bill to replace the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance as passed by the Lok Sabha on 15.3.1994 be taken into consideration and passed unanimously and expeditiously.

Thank you.

The questions were proposed.

THE DEPUTY CHAIRMAN: Now we have one hour allotted for this. Shri Gopalsinh Solanki.

SHRI GOPALSINH G. SOLANKI (Gujarat): Thank you, Madam. The original Bill, that is, the Special Court (Trial of Offences Relating to Transactions in Securities) Bill was introduced in the year 1992 which was enacted into an Act. The circumstances which necessitated the introduction of this Bill, at that time, were, as stated in the Objects, that in the course of investigation by the Reserve Bank of India, large-scale irregularities and malpractices were noticed in transactions relating to Government securities and other securities, indulged in by some brokers in collusion with the employees of the banks and other financial institutions. The same irregularities and malpractices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers. At the same time, what were the circumstances which necessitated the promulgation of the Ordinance and the introduction of the Amendment Bill? The Statement of Objects and Reasons says:

> "Under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, a Special Court was set up at Bombay and a Custodian was appointed to deal with the situation arising out of the large scale irregularities and malpractices which were noticed in the securities transactions of banks, to ensure the speedy trial of the offenders, to recover the amounts involved and to attach the properties of the offenders with a view to prevent diversion of such properties by the persons responsible for these offences."

Madam, so far as the question of Object is concerned, the object expressed is very good. It is with a view to recovering the particular amount involved in the transactions. But why has it been necessitated? In 1992, the greatest scandal of the 20th century, the scam was detected in which a good amount of money was also involved. And the JPC report discloses that about Rs. 8,000 crores are involved in brokerage by Harshad Mehta and Dalal. At the same time, Rs. 36,000 crores were involved in disinvestment of public sector shares. Therfore, the JPC was appointed and its reports were submitted. And it is in consonance with the JPC report that the

[Shri Gopal Sinh G. Solanki]

Government was forced to promulgate the Ordinance on the 25th of January, 1994. And thereby a Bill has been introduced. And the Bill has been divided into three parts. First part deals with the transferring of the procedures of the civil courts and other courts to the Special Court. The second part deals with the vesting of powers under the Arbitration Act of 1940. The third part deals with the punishment to those who are going to commit the contempt of the court.

I would like to know as to how many persons have been arrested so far in connection with the scam cases. So far as the report of the Government is concerned, they have answered in reply to a question in December, 1993, that they have arrested 12 persons and that they were prosecuted. After that, there is no report as such. I would like to know from the Minister as to how many investigations are in progress, how many cases have been registered at various places, how many charge-sheets have been filed, and particularly how many cases have been committed to the particular Special Court because, if you just think over the particular issue, the Act is going to replace the Procedure of Civil Code, and the Special Court will follow its own pattern as described under Section 9A, sub-section (4), which reads as follows:

> "While dealing with cases relating to any matter or claim under this section, the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and subject to the other proisions of this Act and of any rules, the Special Court shall have power to regulate its own procedure."

I would like to know as to what type of procedure is going to be adopted. In the past also, there was a provision under the Constitution of India, when the question of natural justice was involved during those days. For the facility of the Government, that particular provision was repeated. At the same time, the question of a public servant seeking an opportunity under the principle of natural justice, has not been there. At the later stage also, we find section 80 of Civil Procedure Code where in case a suit is to be instituted, it has to be instituted by giving notice under subsection 2 of section 80. And that was also repealed and it was made compulsory to serve a notice to the particular department. Where a Government servant is going to be prosecuted, he has to be provided the opportunity of natural justice under section 190 of Criminal Procedure Code which comes into play in such cases. The Government shall have to sanction prosecution of a particular public servant and all these complications would come in. I would like to know as to what the rules are which are expected to be framed by the Special Court or whether it is for the convenience of screening the people who are involved in the scam relating to securities transactions.

I would like to draw the attention of the Government to section 9A, subsection 5(d) which also refers to sections 123 and 124 of the Evidence Act and it says that no witness could be compelled to say something as evidence to the offence—evidence derived from unpublished official record relating to any affairs of the State, except with the permission of the officer as the head of the department concerned who shall give or withhold such permission as he thinks fit. This will come in the way of prosecution in respect of public sector units in the matter of disinvestment. If a public servant is to be prosecuted, the other witnesses could come and say that they are not supposed to give that particular information, and the case will end. At the same time, section 124, under "official communications", says that no public officer shall be compelled to disclose a communication made to him in official confidence if he considers that public interest would suffer by such disclosure. And this provision will come in the way of prosecttion of a public servant when huge amounts of public sector are disinvested.

I would like to have a guarantee from the hon. Minister that this power will not be misused, because my fear is that this Act is going to be misused with the discretion provided under this section. I support this Bill because there is nothing to be objected to. The intention of this Bill is to bring out the money invested by the poorer classes of our people and to attach the properties of the criminals who are involved. I support the Bill.

SHRI VIREN J. SHAH: As the mover of the Resolution I want to make a submission to the House, through you. As I had said earlier and as my colleage has said, our party is going to support the Bill. I have made my point against promulgation of Ordinances and I seek the permission of the House to withdraw my Resolution, because last week I had spoken to the then Chairperson and said that we shall not press our Resolution, and informed the Secretariat. I was not here and I don't know what happened. Now I seek the permission of the House, through you, to withdraw my Resolution disapproving the Ordinance.

THE DEPUTY CHAIRMAN: Mr. whose presence is also noted. You must permission, from whomsoever you took permission-so many people—I was not aware of it

SHRI VIREN J. SHAH: I did not follow the procedure. I deserved it.

THE DEPUTY CHAIRMAN: You did not follow the procedure. Secondly, there are certain Members whose absence is noted. There are certain Members whose presence is also noted. You must be one of those whose absence is noted; all over, not only in the House, but outside.

SHRI VIREN J. SHAH: My presence was not noted when I spoke.

THE DEPUTY CHAIRMAN: At least, sometimes, you were noted.

SHRI VIREN J. SHAH: I made some points. You had also agreed.

THE DEPUTY CHAIRMAN: There is a procedure. Once a Resolution is moved, it becomes the property of the House. It is for the House to allow the Member to withdraw it. You may relinquish your right to reply, but you cannot prevent it from being put to vote.

SHRI VIREN J. SHAH: That is why I sought the permission of the House, through you, Madam, to withdraw it.

THE DEPUTY CHAIRMAN: Though, at this point of time, permission is not granted because it should come when I am asking for the vote, at the time of the vote. At that time only; permission can be sought.

AN HON. MEMBER: He is in a hurry to go.

THE DEPUTY CHAIRMAN: I do not like this habit with the Members because new precedents are being quoted in the House. Therefore, I want to make it clear and put it on record. As a special consideration, we will seek the permission of the House for the withdrawal of the Resolution. I will put it before the House. If the House permits, it is all right. Otherewise, every day, there would be Resolutions; Members would make their speeches and walk away.

SHRI INDER KUMAR GUJRAL (Bihar): I oppose the Motion. I oppose it for the simple reason that he insisted that the Bill should be taken up first. He kept us waiting. Having kept us waiting, he wants to go away now. He should not be allowed. This shows that he is not serious about it.

THE DEPUTY CHAIRMAN: I am very serious about it because I really want to take Coffee before the Court.

SHRI VIREN J. SHAH: That comes after because Coffee is the last thing in the Menu.

SHRI GURUDAS DAS GUPTA: I think this seriousness is going to cost the time of the House.

THE DEPUTY CHAIRMAN: I have to put it to the House that permission be granted to him.

(*The Resolution was, by leave, withdrawn*)

THE DEPUTY CHAIRMAN: Permission is granted to him to withdraw the Resolution and also to withdraw from the House.

SHRI S. JAIPAL REDDY: He should not be allowed to leave.

THE DEPUTY CHAIRMAN: Now, Mr. Madan Bhatia, please

भाटिया जी, सिर्फ एक घंटा है पूरे बिल के लिये एक घंटा आपका और दूसरे सब लोगों को मिलाकर है। (*Interruptions*) Mr. Bhatia, before you speak, there are two Messages from the Lok Sabha.

MESSAGES FROM THE LOK SABHA

(1) The Appropriation (Vote on Account) Bill, 1994.

(2) The Appropriation Bill, 1994.

SECRETARY-GENERAL: Madam, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:

(1)

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Appropriation (Vote on Account) Bill, 1994, as passed by the Lok Sabha at its sitting held on the 17th March, 1994.

The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India."

THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES AMENDMENT BILL, 1994.

SHRI MADAN BHATIA (Nominated): Madam Deputy Chairman, I rise to support the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Bill, 1994.

There is one point which was made by Mr. Viren Shah and the Member who initiated the discussion. They said that in this Bill, it is provided that the Special Court shall not be bound by the Code of Civil Procedure and shall be at liberty to regulate its own procedure. According to them, this is a new precedent and it is not clarified as to what procedure the Special Court would follow. I would like to say this to the hon. Members that there is a difference between the procedure relating to criminal matters and procedure relating to civil matters. So far as the criminal matters are concerned, procedure is very vital. it was Justice Frankfruteur of the United States who observed and whose observation was quoted with approval by the Supreme Court that history of liberty is the history of strict observance of procedural safeguards. This applies to trial of criminal offences. But so far as civil matters are concerned, the position is quite opposite. The Supreme Court has held that the rules of procedure prescribed in the Code of Civil Procedure are merely a handmaid of justice, they cannot be allowed to override the ultimate administration of justice. They are subordinate to the ultimate aim in civil matters, that is, to administer justice according to the facts of the particular case.

SHRI VIREN J. SHAH: Then, why is it necessary to bring in this amendment?

SHRI MADAN BHATIA: This particular provision, the hon. Member is very right, may herald a new concept in relation to decision in civil matters. I for myself am strongly of the opinion that so far as the trial of civil cases is concerned, it should not be sine qua non to something called the rules prescribed